

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 254 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASHMIKABEN BHALIYA

Versus

KAMLESHBHAI KANTIBHAI PATEL

Appearance:

MR MTM HAKIM for Petitioner
NOTICE SERVED for Respondent No. 1
NOTICE UNSERVED for Respondent No. 3
MR KK NAIR for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/04/98

ORAL JUDGEMENT

Heard Mr MTM Hakim, learned Advocate for the petitioner and Mr K K Nair, learned Advocate for the respondent No.4 - Oriental Insurance Company.

By the impugned order dated 18.11.1997 passed by

the Motor Accident Claims Tribunal (Auxilliary), Baroda granting the petitioner's application under Section 140 of the Motor Vehicles Act, 1988 and directing the opponent No.2 Kaminiben G Vyas, owner of Ambassador car No.GJ 6.T.8778 and and opponent No.4-Oriental Insurance Company Ltd. with whom the vehicle three wheeler Tempo No.GJ.6.U.6349, are jointly and severally liable to pay 50% each of the interim compensation amount of Rs.25,000/- with respect to the accident alleged to have taken place on 12/10/95.

2. It is contended by the learned Advocate for the petitioner that the learned Judge has committed error in making apportionment of the interim compensation. It is submitted that both the parties are jointly and severally liable and it is for the petitioner to recover the manner in which he likes and to the person to whom he prefers. On the other hand, Mr K K Nair, learned Advocate appearing for the respondent No.4 for the Insurance Company submits that since the accident occurred between two vehicles, the learned Judge was absolutely right in making the apportionment. He further submits that the present petition has been filed with a view to oblige the opponent No.2-Kaminiben G Vyas.

3. I have heard the learned Advocates for the parties. I am of the view that this Revision Application deserves to be allowed. Section 140 of the Act provides for liability to pay compensation to certain cases on the principle of no fault. Sub-section (3) of section 140 provides that the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. In view of this it was not open for the learned Judge to consider how the accident took place and who was responsible. Therefore, there is no occasion for the apportionment of the interim compensation awarded under section 140.

4. In view of the above, this CRA is allowed and the order of the Motor Accident Claims Tribunal (Aux.) Baroda dated 18.11.1997 is modified to the extent that opponents No.2 and 4 shall be jointly and severally liable to pay the compensation amount of Rs.25,000/-. The order with respect to liability of 50% each is quashed and set aside. It is made clear that any observation made in this order will not have any reflection on the merit of the case.

Rule made absolute to the aforesaid extent.

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msp.